

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DAVID RHODES,

Petitioner,

v.

**9:13-CV-57
(FJS/TWD)**

M. SHEAHAN, Superintendent,

Respondent.

APPEARANCES

OF COUNSEL

DAVID RHODES

07-A-3657

Green Haven Correctional Facility

P. O. Box 4000

Stormville, New York 12582

Petitioner *pro se*

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**

120 Broadway

New York, New York 10271

Attorneys for Respondent

PRISCILLA I. STEWARD, AAG

SCULLIN, Senior Judge

ORDER

Currently before the Court is Magistrate Judge Dancks' January 12, 2016 Order and Report-Recommendation, in which she recommended that this Court deny and dismiss Petitioner's writ of habeas corpus. *See* Dkt. No. 39. The parties did not file any objections to these recommendations.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting this review, "the Court may 'accept, reject, or modify in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

Having reviewed the entire file in this matter, Magistrate Judge Dancks' January 12, 2016 Order and Report-Recommendation, the parties' submissions and the applicable law, and for the above-stated reasons, the Court hereby

ORDERS that Magistrate Judge Dancks' January 12, 2016 Order and Report-Recommendation, *see* Dkt. No. 39, is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Petitioner's writ of habeas corpus pursuant to 28 U.S.C. § 2254, *see* Dkt. No. 1, is **DENIED** and **DISMISSED** in all respects on the grounds that it is time-barred; and the Court further

ORDERS that the Clerk of the Court shall enter judgment in favor of Respondent and close this case; and the Court further

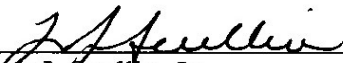
ORDERS that no Certificate of Appealability shall issue with respect to any of the claims set forth in the Petition because Petitioner has not made a 'substantial showing of the denial of a constitutional right' as 28 U.S.C. § 2253(c)(2)¹ requires; and the Court further

¹ *See Miller -El v. Cockrell*, 537 U.S. 322, 336 (2003) (holding that “§ 2253 permits the issuance of a COA only where a petitioner has made a ‘substantial showing of the denial of a constitutional right’”).

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: March 8, 2016
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge